

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0044P
Sales and Use Tax
For Calendar Years 1999, 2000, and 2001**

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer was audited for calendar years 1999, 2000, and 2001. Upon audit it was discovered that the taxpayer failed to self-assess use tax on similar items as in a prior audit which consists of a company vehicle, product scanners, materials for equipment movement, maintenance items, and other miscellaneous purchases.

Taxpayer requests abatement of the penalty because it does not feel it was negligent in any of the instances in which tax was due on a purchase. In addition the majority of the items were capital assets that taxpayer believes are part of its production process.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer was audited for calendar years 1999, 2000, and 2001. Upon audit, it was discovered that the taxpayer failed to self assess use tax on clearly taxable items which were also issues in a prior audit.

Taxpayer states that the majority of the items considered taxable are capital assets that it feels are part of its production process and should be exempt. However, upon subsequent research by the auditor, taxpayer agreed that the auditor had a stronger case on treating these assets as "one step away from the production process."

The hearing officer, in reviewing the audit, found many items that are not a part of the production process. These include items such as a company automobile, computer software licenses, forklifts to move equipment, outdoor lighting, product code scanners, and other miscellaneous items classified as fixed assets.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer was previously audited and failed to remit use tax on clearly taxable items. Taxpayer failed to remit 40.43%, 49.40%, and 17.88% in use tax due for calendar years 1999, 2000, and 2001, respectively, and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.